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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

**U.S. COMMODITY FUTURES TRADING
COMMISSION,**

Plaintiff,

v.

**U.S. VENTURES LC, a Utah limited
liability company, WINSOME
INVESTMENT TRUST, an unincorporated
Texas entity, ROBERT J. ANDRES and
ROBERT L. HOLLOWAY,**

Defendants.

**RESPONSE TO RECEIVER'S
MOTION PROPOSING PLAN OF
DISTRIBUTION AND
MEMORANDUM IN SUPPORT**

Civil No. 2:11-CV-00099 BSJ

Honorable Bruce S. Jenkins

Lon A. Jenkins, Court-appointed Receiver for RCH2, LLC (“**RCH2**”) and the interests of RCH2, LLC and Robert Casey Hall in Related Entities (“**RCH2 Receiver**”), by and through counsel, hereby responds to the *Motion Proposing Plan of Distribution and Memorandum in Support* (docket no. 306) (“**Motion**”) filed by R. Wayne Klein, Receiver for U.S. Ventures, LC, Winsome Trust, Robert J. Andres, and Robert L. Holloway (“**Receiver**”). In support of his response, the RCH2 Receiver states as follows:

1. The RCH2 Receiver is a Court-appointed receiver himself, having been appointed by the Court in May 2007 in the case *Securities and Exchange Commission v. Novus Technologies, LLC, et al.*, Civil No. 2:07-cv-00235TC (“**SEC Enforcement Action**”). The RCH2 Receiver holds an allowed claim in the U.S. Ventures/Winsome receivership as evidenced by Exhibit A attached to the Motion.

2. The Receiver has filed his proposed plan of distribution and seeks Court approval for what he terms a “hybrid” distribution scheme. The Receiver’s proposed distribution scheme would employ a combination of the “all-claimant” method of distribution and a “rising tide” approach. He contemplates that the first approximately \$1 million to be distributed would be distributed pro rata to all claimants based on the allowed amount of their claims (*i.e.* the “all-claimant approach”). The remaining approximately \$1.3 million would be distributed using the rising tide approach - - that is, taking into account distributions made to claimants pre-receivership and by the all-claimant method, only claimants who had previously been paid less than a base amount would receive further distributions. In addition, the Receiver notes that any further distributions would be made employing only the rising tide approach.

3. Although the RCH2 Receiver appreciates the Receiver’s desire to create a fair distribution scheme and his ambivalence in “picking winners and losers,” the RCH2 Receiver submits that the employing exclusively the rising tide approach results in the most fair and equitable distribution scheme. As the Receiver notes, courts have recognized that the rising tide approach results in the most equitable distribution of limited funds for the majority of defrauded investors. Moreover, as the Receiver acknowledges, the CTFC believes that “a balancing of equities favors use of the rising tide approach.”

4. While it is true that under the rising tide approach some defrauded investors will not receive a distribution at this time, those same investors, by definition, will have received a return of at least 20.44% of their invested funds to date. When the Receiver's objective is to fairly and equitably distribute limited funds to defrauded parties, there exists no unfairness to those who do not receive a distribution in the initial round of distributions. As described by the Receiver in his Motion, all investors following the rising tide distribution will have received a distribution of at least 20.44% of their invested funds. Unlike the Receiver's proposed hybrid distribution scheme, a rising tide approach does not unfairly advantage investors who were fortunate enough to receive repayment of their invested funds before the Receiver's appointment.

WHEREFORE, based on the foregoing, the RCH2 Receiver respectfully requests the Court to reject the Receiver's proposed "hybrid" distribution scheme and approve a plan of distribution which employs only a rising tide distribution approach.

DATED this 10th day of December, 2013.

JONES WALDO HOLBROOK & MCDONOUGH

By: /s/ Nathan D. Thomas
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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December, 2013, I caused a true and correct copy of the foregoing **RESPONSE TO RECEIVER'S MOTION PROPOSING PLAN OF DISTRIBUTION AND MEMORANDUM IN SUPPORT** to be served through the Court's CM/ECF System by electronic filing to those entitled to receive notifications, and, additionally, that I served a true and correct copy of the same by first-class mail, postage prepaid, to the following:

Wayne Klein,
Receiver for US Ventures and Winsome
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Salt Lake City, UT 84111

David C. Castleberry
Manning Curtis Bradshaw & Bednar, LLC
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Salt Lake City, UT 84111

/s/ Nathan D. Thomas